# BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EVELYN DUGAY PASCUAL 31770 Alvarado Blvd apt 155 Union City, CA 94587

Registered Nurse License No. 725760

Respondent

Case No. 2012-362

OAH No. 2012010344

## **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 30, 2012.

IT IS SO ORDERED July 30, 2012.

Raymond Mallel, President

Board of Registered Nursing

Department of Consumer Affairs

State of California

. 1	KAMALA D. HARRIS		
2	Attorney General of California FRANK H. PACOE		
3	Supervising Deputy Attorney General JONATHAN D. COOPER		
4	Deputy Attorney General State Bar No. 141461		
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
6	Telephone: (415) 703-1404 Facsimile: (415) 703-5480		
7	Attorneys for Complainant		
8	BEFORE THE BOARD OF REGISTERED NURSING		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	Case No. 2012-362	
12	EVELYN DUGAY PASCUAL 31770 Alvarado Blvd., Apt 155	OAH No. 2012010344	
13	Union City, CA 94587	STIPULATED SURRENDER OF LICENSE AND ORDER	
14	Registered Nurse License No. 725760		
15	Respondent.		
16	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this		
17	proceeding that the following matters are true:		
18	PAR	TIES	
19	1. Louise R. Bailey, M.Ed., RN (Comp	lainant) is the Interim Executive Officer of the	
20	Board of Registered Nursing. She brought this action solely in her official capacity and is		
21	represented in this matter by Kamala D. Harris,	Attorney General of the State of California, by	
22	Jonathan D. Cooper, Deputy Attorney General.		
23	2. Evelyn Dugay Pascual (Respondent) is representing herself in this proceeding and ha		
24	chosen not to exercise her right to be represented by counsel.		
25	3. On or about April 30, 2008, the Boar	rd of Registered Nursing issued Registered Nurse	
26	License No. 725760 to Evelyn Dugay Pascual (Respondent). The Registered Nurse License was		
27	in full force and effect at all times relevant to the charges brought in Accusation No. 2012-362		
28	and will expire on December 31, 2013, unless renewed.		

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## **JURISDICTION**

4. Accusation No. 2012-362 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 14, 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2012-362 is attached as Exhibit A and incorporated by reference.

# ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in
   Accusation No. 2012-362. Respondent also has carefully read, and understands the effects of this
   Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## **CULPABILITY**

- 8. Respondent understands that the charges and allegations in Accusation No. 2012-362, if proven at a hearing, constitute cause for imposing discipline upon her Registered Nurse License.
- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent hereby gives up her right to contest that cause for discipline exists based on those charges.
- 10. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Registered Nurse License without further process.

#### **CONTINGENCY**

- 11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

## **ORDER**

IT IS HEREBY ORDERED that Registered Nurse License No. 725760, issued to Respondent Evelyn Dugay Pascual, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's

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license history with the Board of Registered Nursing.

- 2. Respondent shall lose all rights and privileges as a registered nurse in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was issued, her wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2012-362 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.
- 5. If and when Respondent's license is reinstated, she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$7,925.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 2012-362 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 7. Respondent shall not apply for licensure or petition for reinstatement for two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

# **ACCEPTANCE**

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound

	by the Decision and Order of the Board of Registered Nursing.
7	DATED: June 5, 2012 Eurlie Al Prince
7	EVELYN DUGAY PASCUAL Respondent
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5	The state of the s
6	If the state of Electise and Order is hereby respectfully submitted
7	Atlans.
8	Dated: 6/8//2 Respectfully submitted,
9	KAMALA D. HARRIS Attorney General of California
10	FRANK H. PACOE Supervising Deputy Attorney General
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13	JONATHAN D. COOPER
14	Deputy Attorney General Attorneys for Complainant
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Exhibit A
Accusation No. 2012-362

	Section 1997	
1	KAMALA D. HARRIS Attorney General of California	
2	FRANK H. PACOE Supervising Deputy Attorney General JONATHAN D. COOPER	
3	Deputy Attorney General	
4	State Bar No. 141461 455 Golden Gate Avenue, Suite 11000	
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1404	
6	Fax: (415) 703-5480 Attorneys for Complainant	
7	BEFORE THE	
8	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against: Case No. 2012-362	
12	EVELYN DUGAY PASCUAL 31770 Alvarado Blvd., Apt 155	
13	Union City, CA 94587  ACCUSATION	
14	Registered Nurse License No. 725760	
15	Respondent.	
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18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her	
21	official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
22	Consumer Affairs.	
23	2. On or about April 30, 2008, the Board of Registered Nursing issued Registered Nurse	
24	License Number 725760 to Evelyn Dugay Pascual (Respondent). The Registered Nurse License	
25	was in full force and effect at all times relevant to the charges brought herein and will expire on	
26	December 31, 2013, unless renewed.	
27	<u>JURISDICTION</u>	
28	3. This Accusation is brought before the Board of Registered Nursing (Board),	
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Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

- 4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

# STATUTORY AND REGULATORY PROVISIONS

6. Section 2761 of the Code states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

7. California Code of Regulations, title 16, section **1442**, states:

As used in Section 2761 of the code, "gross negligence" includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

8. California Code of Regulations, title 16, section **1443**, states:

As used in Section 2761 of the code, "incompetence" means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

9. California Code of Regulations, title 16, section 1443.5 states:

A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

- (1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.
- (2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.
- (3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.
- (4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.
- (5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.
- (6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

### **COST RECOVERY**

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## PATIENT A

- 11. On or about November 7, 2010, Respondent was working as a registered nurse at the Bay View Nursing and Rehabilitation Center in Alameda, California. Respondent was assigned to provide care for Patient A.<sup>1</sup>
- 12. During the course of Respondent's shift, Patient A developed a severe hemorrhage from the dialysis shunt site. Respondent observed that Patient A was covered in blood but made no attempt to ascertain the location of Patient A's bleeding and made no attempt to stop the bleeding. Respondent instead left Patient A's room to call an ambulance. Patient A bled to death.
- 13. Rather than treat Patient A for his severe hemorrhage, Respondent performed a breathing treatment on Patient A.
- 14. Respondent willfully and knowingly made false entries in Patient A's medical chart regarding Respondent's observations and treatments of Patient A during the hours leading up to Patient A's death.

# FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Incompetence)

15. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in that she acted with gross negligence and/or incompetence in carrying out usual certified or licensed nursing functions, as set forth above in paragraphs 11-14.

# SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

16. Respondent is subject to disciplinary action under section 2761(a) of the Code in that she acted unprofessionally, as set forth above in paragraphs 11-14.

# PATIENT B

17. On or about November 7, 2010, Respondent was working as a registered nurse at the Bay View Nursing and Rehabilitation Center in Alameda, California. Respondent was assigned to

<sup>&</sup>lt;sup>1</sup> Patient identity is withheld in order to protect confidentiality.

1	provide care for Patient B.	
2	18. During the course of Respondent's shift, Patient B yelled for "help." Respondent	
3	failed to adequately respond to Patient B or address Patient B's complaint that he had been the	
4	victim of theft. Respondent failed to pass on this information about Patient B to the oncoming	
5	shift.	
6	THIRD CAUSE FOR DISCIPLINE	
7	(Incompetence)	
8	19. Respondent is subject to disciplinary action under section 2761(a)(1) of the Code in	
9	that she acted with incompetence in carrying out usual certified or licensed nursing functions, as	
10	set forth above in paragraphs 17-18.	
11	FOURTH CAUSE FOR DISCIPLINE	
12	(Unprofessional Conduct)	
13	20. Respondent is subject to disciplinary action under section 2761(a) of the Code in that	
14	she acted unprofessionally, as set forth above in paragraphs 17-18.	
15	PRAYER	
16	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
17	and that following the hearing, the Board of Registered Nursing issue a decision:	
18	1. Revoking or suspending Registered Nurse License Number 725760, issued to Evelyn	
19	Dugay Pascual;	
20	2. Ordering Evelyn Dugay Pascual to pay the Board of Registered Nursing the	
21	reasonable costs of the investigation and enforcement of this case, pursuant to Business and	
22	Professions Code section 125.3;	
23	3. Taking such other and further action as deemed necessary and proper.	
24	Amore Bear	
25	DATED: December 14, 201 / Flouise R. BAILEY, M.ED., RN	
26	Executive Officer Board of Registered Nursing	
27	Department of Consumer Affairs State of California Complainant	
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